
Site Address: Jetty, The Promenade, Emsworth
Proposal: Certificate of Lawfulness for proposed installation of an access control gate.
Application Type: Certificate of Lawfulness
Application No: APP/23/00525 Expiry Date: 06/09/2023
Applicant: Chichester Harbour Conservancy
Agent: Mr Adrian Karn Case Officer: Denise Sheath
 Chichester Harbour Conservancy
Ward: Emsworth

Recommendation: **GRANT A CERTIFICATE OF LAWFUL USE**

1 Site Description

Jetty, The Promenade, Emsworth

2 Planning History

06/59386/001 - Increased width of walkway from 2m to 2.5m, increase length of 'T' head from 16m to 23m., PERM - 13/06/2006
94/59386/000 - 50 metre service jetty with a 15 metre tee head on east side of Mill Pond Wall projecting into Harbour. PERM - 17/11/1994

3 Proposal

Certificate of Lawfulness for proposed installation of an access control gate.

4 Policy Considerations

- 4.1 The Town and Country Planning (General Permitted Development) (England) Order 2015.
- 4.2 Chichester Harbour Conservancy Act 1971 (CHCA)

5 Statutory and Non Statutory Consultations

Not required

6 Community Involvement

Not required for a Certificate of Lawful Proposed Use or Development.

- 7.1 The proposal has been assessed against the 'Permitted Development' rights in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and the Chichester Harbour Conservancy Act 1971 (CHCA).
- 7.2 The development has been assessed against Schedule 2, Class A, Part 18 of the GPDO. Class A states 'development under local or private Acts or Order'
- 7.3 Schedule 2, Part 18, Class A, (a) and (b) states:

Permitted development:

"A Development authorised by—

(a) a local or private Act of Parliament,

(b) an order approved by both Houses of Parliament,"

which designates specifically the nature of the development authorised and the land upon which it may be carried out.

Conditions

A.1 Development is not permitted by Class A if it consists of or includes—

(a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam; or

(b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic, unless the prior approval of the appropriate authority to the detailed plans and specifications is first obtained.

Officer Comment: *The proposed gate does not fall within (a) the erection, construction, alteration or extension of any building, bridge, aqueduct, pier or dam nor does it fall within (b) the formation, laying out or alteration of a means of access to any highway used by vehicular traffic*

The proposed gate on the Emsworth jetty does not fall under any of the above categories under A.1 a) or b) and therefore, the **Chichester Harbour Conservancy Act 1971** authorises, under Part IV (Duties and Powers of Conservancy), 21,22 and 31 respectively, the following:-

Part 21 (1) It shall be the function of the Conservancy, subject to the provisions of this Act, to take such steps from time to time as to them seem meet for the conservancy, maintenance and improvement of a) the harbour, for the use of pleasure craft and such other vessels as may seek to use the same; b) the amenity area, for the occupation of leisure and recreation and the conservation of nature.

Part 22 (1) In furtherance of the provisions of section 21 of this Act it shall be lawful for the Conservancy to exercise their functions under this Act either themselves to do or to make arrangements for doing by any company, body or person of all or any of the following things:-

(a) the provision, erection and maintenance of all such accommodation, houses, buildings, structures, erections, vehicles, plant, machinery, apparatus or equipment as the Conservancy may think necessary or expedient for the purposes of this Act or the enjoyment of the harbour or the amenity area or any facilities provided for those purposes.

Part 31 (1) Subject to the provisions of this Act.... the Conservancy may maintain, alter and improve the harbour and in connection with the harbour construct, maintain, alter, improve, enlarge and extend embankments, walls, footways, approaches, steps, landing places, piers, quays, jetties, slips, wharves, groynes, sea defences, buoys, navigation marks, cranes, lights, beacons, sewers, drains, watercourses, gas and water pipes, apparatus for electric light and power, warehouses, offices, sheds and other works and conveniences which may be found necessary for the accommodation of vessels or traffic or for the protection of the

harbour:

Provided that

- a) the Conservancy shall not exercise the powers of this section on any land not for the time being belonging to or held by them except with the licence or consent of the owner and occupier of the land;
- b) any electric light and power or other apparatus constructed and maintained under this section shall be so constructed, used and maintained as to prevent any interference with any telegraphic line (as defined by the Telegraph Act, 1878) belonging to or used by the Post Office or with telegraphic communication by means of any such line.

Legal Advice

The Legal Department were consulted and have agreed that the proposal would appear to be permitted development under the provisions of Schedule 2, Class A Part 18 of the GPDO and the relevant provisions of the Chichester Harbour Conservancy Act 1971 ("the 1971 Act").

8 Conclusion

- 8.1 The proposed gate on the Emsworth jetty is therefore authorised as 'permitted development' by Schedule 2, Part 18, Class A (development under local or private Acts or Order) of the GPDO, under Part IV (Duties and Powers of Conservancy), 21, 22 and 31 of the Chichester Harbour Conservancy Act 1971, as detailed above. Therefore, a Lawful Development Certificate **can** be issued.

9 RECOMMENDATION:

That the Head of Place be authorised to **GRANT A CERTIFICATE OF LAWFUL USE** for application APP/23/00525

FIRST SCHEDULE:

This certificate relates to the following development:

Certificate of Lawfulness for proposed installation of an access control gate, as described in the written particulars, plans and other documents submitted with your application received on 03 July 2023.

SECOND SCHEDULE:

This certificate relates to land at Jetty, The Promenade, Emsworth as shown edged red on the submitted Location Plan received 03 July 2023.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
- (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
- (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
- (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
- (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.